

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA v. HARRY L. THOMAS, JR., Defendant.)))))))))))	No. 1:12-cr-00003-001-JDB
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**DEFENDANT’S RESPONSE TO THE GOVERNMENT’S
MEMORANDUM IN AID OF SENTENCING**

In its sentencing memorandum, the government argues for a term of imprisonment at the high-end of the parties’ stipulated Guidelines range. To support its position, the government presents an unjustified caricature of Mr. Thomas. Given Mr. Thomas’ pre-indictment acceptance of responsibility, his cooperation with authorities and his undisputed history of good works, which the District of Columbia itself recognizes in its impact statement, ECF No. 14, the government’s vituperation seems unwarranted. Stretching the facts well beyond the breaking point, the government belittles what Mr. Thomas has done for his community over the past two decades and then asserts that, in any event, his crimes define who he is and obviate his years of service. Counsel submits this brief response to show why these arguments lack merit.

Citing no authority, the government begins by saying effectively that the Court need not consider Mr. Thomas’ good works because the government already took them into account in fashioning the plea agreement. Govt. Mem. at 12. But at sentencing, it is the role of the Court, not the role of the government, to apply the considerations set forth in 18 U.S.C. § 3553(a),

including the history and characteristics of the defendant.¹ For all of the reasons given in Mr. Thomas' sentencing memorandum, including Mr. Thomas' unique record of community service, Section 3553(a) requires rejection of the high-end sentence the government seeks and instead favors the imposition of the sentence requested in Mr. Thomas' sentencing memorandum.

The government proceeds to turn a blind eye to the true significance of Mr. Thomas' community service. Rather than crediting Mr. Thomas for guiding and mentoring numerous youth, including youth in underserved communities, the government suggests that Mr. Thomas is nothing more than a "sports enthusiast" whose good works have been limited to "encouraging youth to participate in sports and organizing youth sporting events." Govt. Mem. at 12, 16.² The letters submitted on Mr. Thomas' behalf undermine the government's attempt to diminish Mr. Thomas' record of service. These letters, written by a broad array of District residents who know Mr. Thomas' work, conclusively demonstrate that Mr. Thomas has used sports, not as an end in themselves, but as a medium for mentoring and providing opportunities for children. If Mr.

¹ It is also noted that the government appears to have afforded to Mr. Thomas far less consideration than it gave to a similarly situated individual, who was convicted in this Court by pre-indictment plea and whose good works did not rival Mr. Thomas'. Compare Mr. Thomas' plea agreement with the government's plea agreement with former member of the House of Representatives Robert Ney. *See United States v. Ney*, 1:06-cr-00272-ESH. Mr. Ney pled guilty to conspiracy to commit honest services wire and mail fraud for receiving hundreds of thousands of dollars of trips, meals, entertainment and campaign contributions in exchange for taking legislative action favorable to lobbyist Jack Abramoff and his clients. *Id.*, ECF Nos. 1 & 4. While Mr. Ney could have been given a 12-point adjustment under the then-applicable USSG § 2C1.7(b)(1)(A) (cross-referencing the theft/fraud loss table under Section 2B1.1) because the value of the items he obtained totaled at least between \$200,000 and \$400,000, according to the allegations contained in the Information, *id.*, ECF No. 1, the government agreed to give him the lesser 8-point adjustment under § USSG 2C1.7(b)(1)(B) for being an elected official. *Id.*, ECF No. 4. As a result of the plea agreement, the government recommended a sentence of 27 months imprisonment. *Id.*, ECF No. 4. (The Court ultimately gave him 30 months. *Id.* 1/19/07 minute entry.) Here, the government recommends 46 months, well over 150% of what it recommended for Mr. Ney.

² At certain points, the government also appears to go out of its way to impugn Mr. Thomas' character with arguments that bear no relationship to the appropriate sentence to be imposed. For instance, the government says that Mr. Thomas displayed hypocrisy by expressing concern over allegations that the former Mayor improperly steered lucrative city contracts to his friends. Govt. Mem. at 16-17. It is unclear how that has anything to do with Mr. Thomas' sentence, especially when Mr. Thomas, by pleading guilty, has accepted responsibility for his own misconduct as a public official. Moreover, as a matter of fact, Mr. Thomas did not simply make baseless, grandstanding allegations, as the government suggests. He and the Council referred the matter to an independent counsel, who conducted an investigation and found sufficient evidence of wrongdoing to refer certain matters to the Justice Department. *See* Mike DeBonis, "Trout Report Identifies Questionable Dealing by Fenty Friends," *Washington Post*, March 14, 2011.

Thomas were merely a “sports enthusiast” and not a mentor, he would not be “Coach Tommy,” the name by which so many people know him. *See, e.g.*, Def.’s Mem. **Exs. 3, 10, 33, 34, 40, 42, 51, 61, 65, 66, 75** and **92**.

In other circumstances, the government recognizes and promotes the importance of doing precisely the kind of work Mr. Thomas has done over the years: mentoring youth. The United States’ Attorney’s Office for the District of Columbia regularly touts mentoring as a means of preventing crime, to the point where the office’s own personnel engage in mentoring. *See, e.g.*, 2010-2011 Report, U.S. Attorney’s Office for the District of Columbia at 4, 13, 70. Moreover, the Justice Department’s Office of Justice Programs (“OJP”) has its own mentoring initiative. *See* <http://www.ojp.usdoj.gov/newsroom/factsheets/ojpfsmentoring.html>. On its website, OJP states that “[m]entoring is an effective way to prevent at-risk youth from becoming involved in delinquency and also to help already delinquent youth change their lives for the better. Mentoring relationships have been shown to improve youth's self-esteem, behavior, and academic performance.” *See* <http://www.ojjdp.gov/programs/mentoring.html> (showing photograph of adult teaching child how to hold a baseball bat), attached as **Ex. 1**. The Attorney General similarly maintains that “mentoring opportunities ... help children reach their full potential ... [and] steer young people away from criminal activities by providing them with healthy life alternatives, positive role models and direct contact with caring adults.” *See* <http://www.ojp.usdoj.gov/newsroom/pressreleases/2009/OJJDP09151.htm>. This is exactly what Mr. Thomas has provided young people during his lifetime. The government’s attempt to diminish Mr. Thomas’ good works in order to secure a high-end sentence is untenable.

The government next asserts that Mr. Thomas deserves no consideration for his good works because it was “his job” to get resources to his constituents, Govt. Mem. 13, and because

he was obligated to perform civic and charitable work as a Councilmember. *Id.* at 15. This argument is a straw man. As the sentencing memorandum makes clear, Mr. Thomas is not seeking consideration for getting resources to his constituents while he served on the Council. What warrants consideration is Mr. Thomas' dedication of considerable time, energy and resources to community service for many years before he became an elected official and his continuing, hands-on devotion to community service thereafter. Moreover, significant work Mr. Thomas did on behalf of young people after he became a Council member – *e.g.*, running baseball clinics on Saturday mornings, organizing large weekend baseball tournaments, personally providing instruction in sports programs – was decidedly not part of his duties as an elected official, particularly one whose position was part-time, as is the position of District Council member. *See United States v. Serafini*, 233 F.3d 758, 773-776 (3d Cir. 2000) (affirming downward departure for good works that went “above and beyond” public servant’s call of duty).³ That Mr. Thomas periodically used his position to promote youth sports programming does not mean that developing and taking part in it was a job requirement, and it does not obviate the unassailable fact that the programs benefitted the children who participated in them.

Perhaps the most tortured argument the government makes to demean Mr. Thomas is that the youth sports programming he facilitated during his Council tenure should count as an aggravating factor, rather than as a mitigating factor, because it created an “appearance of altruism that assisted in concealing his theft.” Govt. Mem. at 15. The strained logic of this assertion is clear. Did the programming occur? Yes. Was Mr. Thomas the driving force behind

³ The government cites this case to argue that Mr. Thomas deserves no credit for the community service he did while in office. Govt. Mem. at 15. *Serafini*, however, stands for the exact opposite proposition, *affirming* a downward departure for good works by a public servant similar to the good works of Mr. Thomas during his Council tenure. While *Serafini* says that civic and charitable work performed as part of a public official’s daily functions do not warrant a downward departure under the Guidelines – the case says *nothing* about whether such work warrants consideration under Section 3553(a)(1) – it holds that good works not reflective of mere political duties do warrant a departure. *Serafini*, 233 F. 3d at 773-76.

it? Yes. Did it benefit children? Yes. How this programming becomes an aggravating factor defies explanation. As to some of it – *e.g.*, the summer camp at Charles Young Elementary School – Mr. Thomas has admitted that resources came from District government funds other than the grant funds he unlawfully obtained and that he was responsible for false reports saying that resources came from those grant funds. But the question for sentencing purposes is whether, notwithstanding the misappropriation of funds, Mr. Thomas facilitated and personally participated in beneficial programming for young people. The answer is yes. As Mr. Thomas has repeatedly recognized, this does not excuse his crimes. But Mr. Thomas’ continuing, hands-on service to youth merits some consideration, and it certainly should not count against him.

CONCLUSION

The government’s effort to attain a high-end sentence by impugning Mr. Thomas’ record of good works collapses under the weight of its own illogic. For the foregoing reasons, as well as those set forth in Mr. Thomas’ sentencing memorandum, counsel request that the Court give due consideration to Mr. Thomas’ extensive history of service, reject the government’s high-end recommendation, and impose the below-Guidelines sentence counsel has requested.

Respectfully submitted,

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DATE: May 1, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to the following:

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Exhibit 1

U.S. Department of Justice
Innovation * Partnerships * Safer Neighborhoods

Office of Justice Programs

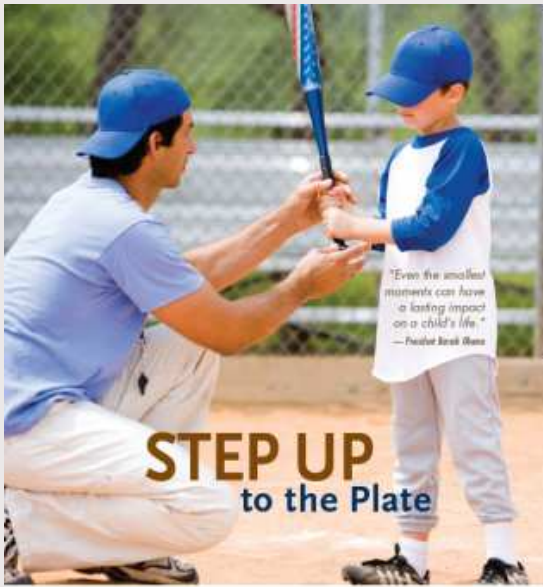
Office of Juvenile Justice and Delinquency Prevention

Serving Children, Families, and Communities

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Mentoring Resources



"Even the smallest moments can have a lasting impact on a child's life."
— President Barack Obama

STEP UP to the Plate

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention
ojjdp.gov

BE A MENTOR

Make a lasting impact on a child's life.

"Every day, mentors in communities across our Nation provide crucial support and guidance to young people. Whether a day is spent helping with homework, playing catch, or just listening, these moments can have an enormous, lasting effect on a child's life."

— President Barack Obama

Mentoring is an effective way to prevent at-risk youth from becoming involved in delinquency and also to help already delinquent youth change their lives for the better. Mentoring relationships have been shown to improve youth's self-esteem, behavior, and academic performance. For these reasons, OJJDP has long supported mentoring programs, awarding more than \$480 million since 1994 to support juvenile and youth mentoring programs.

The resources below provide information about mentoring and links to mentoring organizations.

4-H
4-H focus is the personal growth of the youth membership. Life skills development was built into 4-H projects, activities and events to help youth become contributing, productive, self-directed members of society.

Be a Mentor or Mentee
This GirlsHealth.gov Web site provides information about the benefits of finding or becoming a mentor.

Big Brothers Big Sisters of America
With a network of more than 500 local agencies throughout the nation, maintaining more than 145,000 one-to-one relationships between youth and volunteer adults, operates as the largest and best-known mentoring program in the country.

Boys and Girls Club of America
Programs and services promote and enhance the development of boys and girls by instilling a sense of competence, usefulness, belonging and influence.

Expand Your Universe: Mentor a Child
This Web site highlights the importance of becoming involved in mentoring activities.

Federal Mentoring Council
This Web site provides in-depth information on the Council, its mentoring initiatives and its partner, resources,

research findings, and contact information on youth mentoring programs.

[FindYouthInfo.gov](#)

FindYouthInfo.gov was created by the Interagency Working Group on Youth Programs (IWGYP), which is composed of representatives from 12 Federal agencies that support programs and services focusing on youth. The IWGYP promotes the goal of positive, healthy outcomes for youth by promoting enhanced collaboration at the federal, state, and local levels; disseminating information about critical resources, including evidence-based programs, to assist interested citizens and decision-makers, particularly at the community level, to plan, implement, and participate in effective strategies for at-risk youth; and developing an overarching strategic plan for federal youth policy, as well as recommendations for improving the coordination, effectiveness and efficiency of youth programs, using input from community stakeholders, including youth.

[The Harvard Mentoring Project](#)

In 1997, the Center for Health Communication of the Harvard School of Public Health launched a national media campaign to promote the growth of the mentoring movement with the goal of linking large numbers of young people with adult mentors. The Center's latest initiative, National Mentoring Month, was launched in January 2002. This annual month-long campaign includes a combination of national media and local media involvement and extensive community outreach.

[MENTOR](#)

Widely acknowledged as the nation's premier advocate and resource for the expansion of mentoring initiatives nationwide, MENTOR works with a strong network of state and local Mentoring Partnerships to leverage resources and provide the support and tools that mentoring organizations need to effectively serve young people in their communities.

[MentorYouth](#)

Through a cooperative agreement with the Department of Justice, this faith-based mentoring Web site seeking to recruit and refer Christian adults, and the community as a whole, to mentoring programs in their local communities.

[The National Mentoring Center](#)

The Northwest Regional Educational Laboratory's National Mentoring Center provides training and technical assistance to mentoring programs through various services and conferences. Created and funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the National Mentoring Center promotes connections between children and caring adults in the community. The Center also works with OJJDP's Juvenile Mentoring Program sites to develop training and resources for local, one-to-one mentoring programs for at risk-youth.

[The National Police Athletics/Activities Leagues Inc.](#)

National PAL exists to prevent juvenile crime and violence by providing civic, athletic, recreational and educational enrichment, mentoring and tutoring to the 400 PAL chapters around the country.

[Youth for Justice](#)

Funded by the Office of Juvenile Justice and Delinquency Prevention, Youth for Justice is a consortium of national law-related education organizations providing youth with opportunities for meaningful participation in their communities.

Additional Resources

For additional information on Mentoring including publications, funding, and other related resources access the [Mentoring Special Feature](#) from the National Criminal Justice References Service. To learn more about being a mentor access "[Building Relationships: A Guide for New Mentors.](#)"

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